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<b>REISSUE APPLICATION DECLARATION BY THE ASSIGNEE</b>	Docket Number (optional) 0624-4129
<p>I hereby declare that:</p> <p>The residence, mailing address and citizenship of the inventors are stated below.</p> <p>I am authorized to act on behalf of the following assignee: <u>Bayer CropScience Inc.</u></p> <p>and the title of my position with said assignee is: <u>Vice President, Secretary and General Counsel</u></p> <p>The entire title to the patent identified below is vested in said assignee.</p>	
Inventor <u>Laurence C. Mudge</u>	Citizenship <u>U.S.A.</u>
Residence/Mailing Address <u>8 Ancram Road, Camden, SC 29020</u>	
Inventor <u>N/A</u>	Citizenship
Residence/Mailing Address	
<input type="checkbox"/> Additional Inventors are named on separately numbered sheets attached hereto.	
Patent Number <u>5,599,804</u>	Date of Patent Issued <u>February 4, 1997</u>
<p>I believe said inventor(s) to be the original and first inventor(s) of the subject matter which is described and claimed in said patent, for which a reissue patent is sought on the invention entitled:</p> <div style="border: 1px solid black; padding: 10px; margin: 10px 0;"> <p><b>FUNGICIDAL COMPOSITIONS FOR THE ENHANCEMENT OF TURF QUALITY</b></p> </div> <p>the specification of which</p> <p><input type="checkbox"/> is attached hereto.</p> <p><input checked="" type="checkbox"/> was filed on <u>May 19, 2004</u> as reissue application number <u>10</u> / <u>849,509</u></p> <p>and was amended on <u>Dec. 27, 2005 and Apr. 29, 2008</u></p> <p style="text-align: center;">(If applicable)</p> <p>I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above.</p> <p>I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR 1.56.</p> <p><input type="checkbox"/> I hereby claim foreign priority benefits under 35 U.S.C. 119(a)-(d) or (f), or 365(b). Attached is form PTO/SB/02B (or equivalent) listing the foreign applications.</p> <p>I verily believe the original patent to be wholly or partly inoperative or invalid, for the reasons described below. (Check all boxes that apply.)</p> <p><input type="checkbox"/> by reason of a defective specification or drawing.</p> <p><input checked="" type="checkbox"/> by reason of the patentee claiming more or less than he had the right to claim in the patent.</p> <p><input type="checkbox"/> by reason of other errors.</p>	

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This collection of information is required by 37 CFR 1.175. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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Docket Number (Optional) 0624-4129

**See Attached Additional Sheets**

[Attach additional sheets, if needed.]

**All errors corrected in this reissue application arose without any deceptive intention on the part of the applicant.**

☒ Practitioners associated with Customer Number:

27123

☐ **OR**

☐ Practitioner(s) named below:

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I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this declaration is directed.

**Signature**

Date \_\_\_\_\_

Aug. 20, 2008

Full name of person signing (given name, family name)

**Bruce Mackintosh**

**Address of Assignee**

2 T.W. Alexander Drive, Research Triangle Park, NC 27709

## **REISSUE APPLICATION DECLARATION BY ASSIGNEE**

### **ADDITIONAL SHEETS RE: ERROR(S) UPON WHICH REISSUE IS BASED**

**In re Reissue of: U.S. Patent No. 5,599,804**

Inventor: Laurence C. Mudge

Serial No.: 10/849,509

Filed: May 19, 2004

For: **FUNGICIDAL COMPOSITIONS FOR THE  
ENHANCEMENT OF TURF QUALITY**

One such error being relied upon as a basis for reissue, which caused applicant to claim more than it was entitled to, arises when the claims are construed to embrace the presence of a fungicidal compound not mentioned in the claims, i.e. mancozeb. Under such a claim construction: (A) the method claims (claims 1-9) of the patent could be construed to embrace a method of combatting fungi and enhancing turf quality in turfgrass which comprises applying to said turfgrass synergistic fungicidally effective amounts of a monoester salt of a phosphorous acid of the specified formula (including the compound known as "fosetyl-Al"), phthalocyanine and the fungicidal compound mancozeb; and (B) the fungicidal composition claims (claims 10-21) of the patent could be construed to embrace a mixture of a monoester salt of a phosphorous acid of the specified formula (including "fosetyl-Al"), phthalocyanine and the fungicidal compound mancozeb.

The foregoing possible claim construction, whereby the method and composition patent claims are construed to include the non-recited fungicidal compound mancozeb, does not appear to be consistent with the '804 patent specification at Column 5, lines 10-30. There it states: "The synergistic combinations ["first active agent" and benzoporphyrin/phthalocyanine] according to the invention may be used with advantage in admixture with one another or with

other known fungicides, such as..." - - but mancozeb is not mentioned in the recited list of other known fungicides.

If the '804 patent claims were so construed to embrace a composition or method including mancozeb, the patent claims would be invalid over the prior art Lucas U.S. Patent 5,336,661, a reference of record and considered during the original prosecution for the '804 patent. The Lucas '661 patent describes in the Examples and Table 3 the treatment of crown and root rot with a mixture of the active fungicide ingredients of mancozeb plus fosetyl-Al, obtained by mixing together the commercial fungicides known under the names FORE™ (active ingredient: mancozeb) and ALIETTE™ (active ingredient: fosetyl-Al). See, e.g. '661 patent at Column 4, lines 45-65 and Table 3. As stated in the '804 patent at Column 7, lines 65-66, the fungicide FORE™ contains both mancozeb and Pigment Blue 15, which is a phthalocyanine dye.

The independent claims 1 and 10, as presented in the reissue application, are patentably distinguished over the prior art mixture of ALIETTE™ and FORE™ because they exclude mancozeb and therefore, the product FORE™.

Two additional errors are sought to be corrected in the presented claims 1 and 10. In Patent claim 10, the term "tier" is changed to "for" to correct an obvious mistake. In Patent claim 1, the expression "1 part by weight of" has been relocated to apply to the "first active agent" including both components (i) and (ii), rather than only applying to component (i) as written in patent claim 1. This correction is consistent with patent claim 2 which refers to "1 part by weight" as pertaining to the "first active agent." This is also consistent with patent claim 10 which applies the expression "1 part by weight" to the "first active agent"

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